

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

KEN JOHANSEN, individually and on behalf )  
of all others similarly situated, )

Plaintiff, )

v. )

LIBERTY MUTUAL GROUP, INC., and )

SPANISH QUOTES, INC. d/b/a )

WESPEAKINSURANCE, )

Defendants, )

LIBERTY MUTUAL GROUP, INC., )

Cross-Claimant, )

v. )

SPANISH QUOTES, INC. d/b/a )

WESPEAKINSURANCE, )

Cross-Defendant, )

LIBERTY MUTUAL GROUP, INC., )

LIBERTY MUTUAL INSURANCE COMPANY, )

Third-Party )

Plaintiffs, )

v. )

PRECISE LEADS, INC., and )

DIGITAS, INC., )

Third-Party )

Defendants. )

**CIVIL ACTION  
NO. 1:15-cv-12920-ADB**

**THIRD-PARTY DEFENDANT DIGITAS'S OBJECTION TO  
THE PROPOSED DISMISSAL ORDER AS TO PRECISE LEADS**

Third-Party Defendant Digitas, Inc. (“Digitas”) submits this memorandum objecting to the Joint Motion for Entry of Dismissal Order filed by Third-Party Plaintiffs Liberty Mutual Group, Inc. and Liberty Mutual Insurance Company (together, “Liberty”) and Third-Party Defendant Precise Leads, Inc. (“Precise Leads”). (ECF No. 208)

Liberty and Precise Leads have moved, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, for voluntary dismissal of Liberty’s Third-Party Complaint against Precise Leads and Precise Leads’ Counterclaim against Liberty. The rule provides that such a dismissal will be “without prejudice” unless the Court orders otherwise. The proposed form of order tendered by movants provides for dismissal with prejudice. Liberty and Precise Leads have not offered the Court any justification for dismissal with prejudice, and in the absence of such justification, the dismissal should be entered without prejudice.

Dismissal without prejudice is particularly appropriate in this case where Liberty’s claims against Digitas remain pending. Liberty asserted claims against both Precise Leads and Digitas based on alleged contractual obligations in Liberty’s respective contracts with each of them. Neither the motion nor the proposed form of Order makes clear the bases on which Liberty and Precise Leads have settled, injecting an element of confusion into the allocation of damages that Liberty claims against Digitas and Precise leads, respectively. How Liberty or Precise Leads may seek to use a dismissal *with* prejudice in this context is uncertain. The provisions of the settlement agreement between Liberty and Precise Leads, which has been provided to Digitas, do not resolve these uncertainties. For example, Liberty may argue that Digitas cannot point at Precise Leads’ empty chair at trial by reason of a dismissal with prejudice. Or, Digitas may press to reduce its liability or seek indemnity from Precise Leads, and Precise Leads may then argue that the proposed dismissal order precludes such claims. Dismissal without prejudice, as

Rule 41(a)(2) provides, will eliminate such uncertainties and preserve Digitas's defenses as well as its right to pursue an indemnity claim against Precise Leads should Digitas be found liable to Liberty.

Digitas therefore respectfully objects to the proposed dismissal order and requests that this Court enter a dismissal order without prejudice as the Rule otherwise requires.

Respectfully submitted,

Dated: July 15, 2019

/s/ Laura Greenberg-Chao  
Terry Klein, BBO# 652052  
tklein@henshon.com  
Laura Greenberg-Chao, BBO# 650916  
[lgreenbergchao@henshon.com](mailto:lgreenbergchao@henshon.com)  
HENSHON KLEIN LLP  
120 Water Street, 2d Floor  
Boston, Massachusetts 02109  
Telephone: (617) 367-1800  
Facsimile: (617) 507-6454

*Of Counsel:*

Michael Dockterman, Illinois Bar # 3121675  
mdockterman@steptoe.com  
STEPTOE & JOHNSON LLP  
115 South LaSalle Street, Suite 3100  
Chicago, IL 60603  
T: (312) 577-1243

*Counsel for Third-Party Defendant Digitas, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on July 15, 2019.

/s/ Laura Greenberg-Chao